

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on January 7, 2003 at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch
Cindy Peterson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 3, 12/17/2002; SB 10,
12/17/2002; SB 32, 12/17/2002;
SB 13, 12/17/2002, SB 75,
1/6/2003

Executive Action: SB3, SB 10, SB 32, SB 75

HEARING ON SB 3

Sponsor: SEN. DAN HARRINGTON, SD 19, BUTTE

Proponents: Ed Smith, Clerk of the Montana Supreme Court
Mary Phippin, Montana Association of Clerks of
District Court

Opponents: None

Opening Statement by Sponsor: SEN. DAN HARRINGTON, SD 19, BUTTE, introduced SB 3 which is an act eliminating the requirement that the clerks of the district court and the Clerk of the Supreme Court compile and make available certain information relating to sentencing in criminal cases.

Proponents' Testimony:

Ed Smith, Clerk of the Montana Supreme Court, remarked that the sentencing statute was enacted in 1981. Chief Justice Haswell assigned the responsibility to the Court Administrator of the Montana Supreme Court because the state judicial information was located in that office. In 1977 the database contained information on all civil and criminal cases originating in the district courts. The clerk of district court for each county would send in a history form for each case and this information would be entered into the database and compiled quarterly for each judge. With the enactment of the statute in 1981, the report was modified to contain the sentencing statute number, define deferred sentence information, case name and restitution amount. The percentage apportion along with the judge's reasoning was not incorporated nor did the judge sign the form.

In 1991 the State Judicial Information System was ended. In 1995 the Office of the Clerk of the Supreme Court requested an appropriation from the Appropriations Committee to fund staff and technology to implement the sentencing statute. The request was denied because there had not been significant demand for the report and the state could not afford to fund it. Under the Criminal Justice Information System, the clerk of district court completes a form that originates upon the arrest and fingerprinting of an individual. This information contains the disposition of the sentence. The Department of Justice enters the information on their Criminal Justice Information System.

Mr. Smith requested that the Judiciary Committee repeal this statute. He further requested that the Committee work with the Montana Judges Association, Clerks of District Court Association,

and the Department of Justice on a workable statute.

Mary Phippin, Montana Association of Clerks of District Court,
rose in support of SB 3.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. DAN MCGEE asked whether this statute was seen as an unfunded mandate. **Mr. Smith** confirmed that it was.

SEN. MCGEE questioned whether the information was important information. **Mr. Smith** noted that the sentencing information was important but some of the requirements within the current statute are not workable. Not having a central database results in difficulty when sending the information within the system.

SEN. JEFF MANGAN asked whether the information was necessary for federal grants, requests for proposals, etc. **Mr. Smith** remarked that he was not involved with grant applications. He added that the sentencing information is important and recommended that the Committee work on legislation with the Montana Judges Association, Clerks of District Court Association, and the Department of Justice on a workable statute.

SEN. JERRY O'NEIL questioned whether sentencing information was provided through the system by other methods. **Mr. Smith** remarked that there is documentation at the time a person is charged. This information is found in the office of the clerk of district court. At the time of sentencing, this information is forwarded to the Department of Justice.

SEN. O'NEIL asked whether there was a duplication of information. **Mr. Smith** remarked that the statute was not being fulfilled at this time due to the costs and the fact that it is not workable by the local judicial officials.

Closing by Sponsor:

SEN. HARRINGTON closed on SB3.

HEARING ON SB 10

Sponsor: **SEN. DUANE GRIMES, SD 20, CLANCY**

Proponents: **Greg Petesch, Code Commissioner**
Gordon Morris, Montana Association of Counties

Opponents: None

Opening Statement by Sponsor:

SEN. DUANE GRIMES, SD 20, CLANCY, noted that SB 10 was a Code Commissioner bill.

Proponents' Testimony:

Greg Petesch, Code Commissioner, remarked that the information in the bill includes changes noted during codification, annotation, and analysis of questions presented over the course of the interim. A proposed version of each section is sent to the agency charged with administering that section of law asking them to confirm that the correction is technical and not substantive. If a positive response is not received, the material is not included in the bill. For those areas of the law not administered by a state agency, the information is sent to the appropriate association. The same response is required.

This bill contains 44 sections that either use the define term or confine language to terminology consistently throughout the code. It contains 30 sections that correct erroneous citations to other provisions of law. Fourteen sections of the bill conform to executive reorganizations. There are 26 sections included in the bill by request of the Department of Revenue that update references to the Internal Revenue Code in the MCA.

Section 1 provides a citation form for the MCA. The last section of the bill provides that, given direction by another statute, the Code Commissioner may correct erroneous references at the time of codification.

Gordon Morris, Montana Association of Counties, stated that he has reviewed the bill and is in agreement that the changes are non-substantive.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. MIKE WHEAT questioned whether the Code Commissioner was required to inform the Legislature of corrections made at the time of codification. **Mr. Petesch** explained that a separate report is prepared for those changes. It is published at the beginning of each volume of annotations.

SEN. AUBYN CURTISS questioned the number of changes that would ordinarily be made during an interim. **Mr. Petesch** noted that this would usually include less than a dozen.

Closing by Sponsor:

SEN. GRIMES closed on SB 10.

EXECUTIVE ACTION ON SB 10

Motion/Vote: **SEN. MCGEE** moved that **SB 10 DO PASS**. Motion carried unanimously.

HEARING ON SB 75

Sponsor: **SEN. COREY STAPLETON, SD 10, BILLINGS**

Proponents: **Lieutenant Colonel James P. Moran, Staff Judge Advocate, Montana National Guard**
Brigadier General Randy Mosley, Assistant Adjutant General for the National Guard and Deputy Director of the Department of Military Affairs

Opponents: **None**

Opening Statement by Sponsor:

SEN. COREY STAPLETON, SD 10, BILLINGS, introduced SB 75. He remarked that this legislation will address the instance of national guardsmen who are called to active duty and are not covered under the federal law. This is a tool for judges to provide some leniency for national guardsmen when on active duty.

Proponents' Testimony:

Lieutenant Colonel James P. Moran, Staff Judge Advocate, Montana National Guard, provided his written testimony, **EXHIBIT(jus02b01)**. The legislation would provide limited protections to members of the Montana National Guard who are called to state active duty or federally funded Title 32 active duty that does not qualify for the federal Soldiers' and Sailors' Civil Relief Act (SSCRA) protection. The department believes that it would not be prudent to wholly adopt all of the SSCRA protections as state law. Since 911, the national guard has been in a period of transformation regarding its roles and mission. It would be more prudent to selectively adopt and customize protections that are appropriate for a Montana guardsman.

The protections in this bill apply to members of the National Guard who are on state active duty or federally-funded active duty pursuant to Title 32 U.S.C. Section 3 provides relief from actions related to mortgage, lease, and rental payments. A court would be allowed to adjust payments due or to stay the action for up to three months. Section 4 allows a court to stay any civil

action upon the request of a service member, as either plaintiff or defendant, or other person on the service members behalf unless the court determines that the ability of the service member to pursue an action is not materially affected by the service members military service. Section 6 states that the Montana Act would not affect rights and duties that matured or penalties that incurred before the effective date of the act.

{Tape: 1; Side: B}

Brigadier General Randy Mosley, Assistant Adjutant General for the National Guard and Deputy Director of the Department of Military Affairs, stated that this is an important bill for the members of the National Guard. We ask a lot of our soldiers. A number of activations are being proposed for the ensuing months. It is important that we provide the incentives and protections that are necessary when we ask soldiers to leave their families, jobs and homes.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. O'NEIL raised a concern regarding the timely payment to a landlord. **Lt. Col. Moran** noted that under the federal Soldiers' and Sailors' Civil Relief Act (SSCRA), if a landlord filed a suit for eviction, repossession, etc., the service member's dependents could apply to the court and the court would look to see if the military duty materially affected the ability to pay the rent. Service members take a significant salary drop when they go into military service. The federal law allows the court to either stay the action or come up with an arrangement for payment to the landlord. The service member still needs to pay the total amount owed. The court does not erase the debt.

SEN. WHEAT asked whether this was a serious problem. **Lt. Col. Moran** remarked that there are problems when soldiers are on extended periods of federally funded active duty that are not covered under the SSCRA. Most soldiers are young. They don't own homes but do have landlords. The pay from the military side may be significantly lower than what they may have been earning.

SEN. WHEAT asked for an example of a federally funded active duty situation that would not be funded by the SSCRA. **Lt. Col. Moran** explained that as part of his professional military training, he was put on active duty in Arizona. He was there for approximately 11 months. This was federally funded, but he was part of the Montana National Guard under the control and command of the Governor. He was not protected under the SSCRA. He was

provided living quarters in Arizona so the allowance he would normally receive to pay his mortgage was not available. He was fortunate to be able to rent the home that he owned, but this is not always the case. The National Guard members who were protecting our airports were not covered under the SSCRA. If they were federal soldiers, they would be protected holding the same jobs.

SEN. WHEAT noted that the bill provided relief for up to three months. He questioned whether that time frame was sufficient.

Lt. Col. Moran noted that this is the time frame used in the federal statute and appears to be working quite well.

Closing by Sponsor:

SEN. STAPLETON closed on SB 75.

EXECUTIVE ACTION ON SB 75

Motion: **SEN. MANGAN** moved that **SB 75 DO PASS.**

Discussion:

SEN. WHEAT remarked that service members are called upon in cases of emergencies and trying times. He urged committee members to vote in favor of the bill.

CHAIRMAN GRIMES added that this is similar to the situation with taxes owed when soldiers are called to duty under the federal act. It is important to pass this legislation for our young men in Montana who are serving their country.

Vote: Motion carried **unanimously.**

HEARING ON SB 32

Sponsor: **SEN. DALE MAHLUM, SD 32, MISSOULA**

Proponents: **L. John Onstad, Security Director, Montana State Lottery**

Opponents: **None**

Opening Statement by Sponsor:

SEN. DALE MAHLUM, SD 32, MISSOULA, introduced SB 32 which revises the state lottery fingerprint requirements to meet new FBI criteria. To meet the new U. S. Department of Justice requirements, SB 32 amends two sections of the Montana lottery

law. The bill has an immediate effective date upon passage and approval. One section defines felony and gambling related convictions and is amended to identify specific categories of persons who shall be fingerprinted. The other section discloses gaming suppliers. In April of 2002, the Montana State Lottery was notified that without changes in the law, the FBI would not be able to assist Montana with fingerprint checks.

Proponents' Testimony:

L. John Onstad, Security Director, Montana State Lottery, stated that this legislation is brought to comply with new requirements imposed by the U.S. Dept. of Justice. The FBI performs the fingerprinting examination for the lottery. The Security Division of the Montana Lottery is a law enforcement agency that is responsible for assuring security, honesty, fairness and integrity in the conduct of the lottery. Lottery law specifies those persons who may not hold a position with the lottery due to criminal convictions. It requires people associated with the lottery to be fingerprinted. This legislation directs the FBI to do the examination. The commissioners, director, assistant director and employees of the lottery are also fingerprinted. Fingerprinting retailers has been permissive. As a practice, this is not done. The new requirements state that everyone is treated alike. They do not wish to fingerprint all retailers and would like to have this taken out. Retailers are not a problem.

Vendors are required to report if any member of their staff has a criminal background and provide fingerprints for that person. Under the federal guidelines, the FBI would not examine those fingerprints. This portion of the statute would be removed.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. MCGEE asked whether retailers would be fingerprinted. **Mr. Onstad** explained that they are able to fingerprint retailers on a permissive basis. The legislation would remove the authority to fingerprint retailers.

Closing by Sponsor:

SEN. MAHLUM closed on SB 32. This legislation holds the state harmless if the contracting supplier does not fulfill the statutory obligations.

EXECUTIVE ACTION ON SB 32

Motion: SEN. WHEAT moved that SB 32 DO PASS.

Discussion:

SEN. O'NEIL noted that he has a problem voting for this because it is a federal requirement but he supports the bill.

Vote: Motion carried 8-0.

EXECUTIVE ACTION ON SB 3

Motion: SEN. O'NEIL moved that SB 3 DO PASS.

Discussion:

SEN. MCGEE asked whether the sentencing information is currently being gathered. He also wondered whether it was being used. Valencia Lane explained that Legislative Interim Committees have been reviewing sentencing issues for over a decade. There has always been a problem obtaining criminal sentencing information that is accurate and up to date. Her understanding is that the statute is not being complied with at the present time. The information needs to be gathered but this apparently is not happening.

SEN. MCGEE stated that he has served on a number of committees addressing sentencing issues. They have never been able to gather detailed data. He questioned why the clerks of court are not providing this information. Ms. Phippen remarked that she is not totally familiar with the statute. She was not aware that the sentencing data needed to be reported quarterly or that the sentencing judges needed to sign this report. The clerks have been furnished forms, through the Supreme Court and the ID Bureau, and the information required has been furnished.

SEN. MANGAN stated that the information is important for the Board of Crime Control and local governments. If this is repealed, it may be necessary to develop a study resolution for the interim to come up with a mechanism that is cost effective where the data can be compiled. He supported the bill.

SEN. GARY L. PERRY raised a concern regarding a directive of the law not being followed as well as repealing the directive without a solution to replace it.

SEN. WHEAT stated that there is a compilation of documents that are kept in the district court file. Upon a conviction,

additional documentation is kept in the file that supports any sentence that is handed down by the district court. Documentation is maintained at the prison level. The information is available. The statute that would be repealed is a mechanism for gathering information that is available. The statute is seen as an unfunded mandate.

SEN. CURTISS raised a concern regarding whether or not specific forms were being used to request the information. She expressed the need for the information to be uniform.

Mr. Smith explained that the bulk of the information would be contained within the district court record. In sentencing, the judge will indicate the statute number within the actual sentence.

SEN. CURTISS raised a concern in repealing the statute. She questioned whether other sections of the code covered sentencing data compilation. **Ms. Phippin** stated that she was a clerk of court for Glacier County. The forms they completed were provided by either the ID Bureau or the Court Administrators. The forms they completed included the charges, reduction in charges, and the reasons why the judge imposed the sentence. A copy of the judgment was attached with the judge's signature.

SEN. MCGEE stated that there is a law which states that the clerks of court will gather information on a form to be supplied by the Clerk of the Supreme Court. This is to be compiled and dispensed to the individual courts. He questioned if this was currently being accomplished. **Mr. Smith** stated that it was not. The first reason this is not being done is that the Supreme Court has no database because one has not been funded. In 1995, he requested funding, which has been declined. The clerks of district court have testified that they would need to add additional staff to comply with this mandate. In 1991, the program was ended due to funding cuts.

SEN. MCGEE spoke in opposition to the bill. This information is very important to policy determinations made by the legislature and others.

CHAIRMAN GRIMES remarked that he also was frustrated with the lack of information available both from the correctional system as well as from the justice system. A two decade old law is probably not the best avenue for compiling the information.

Vote: Motion carried 7-2 with Curtiss and McGee voting no.

{Tape: 2; Side: A}

HEARING ON SB 13

SEN. MANGAN stated that he has a conflict of interest in relation to this bill. His company is one of two companies in the state that provides ignition interlock devices and this bill would lower the threshold for judges to order ignition interlock devices for first time offenders.

Sponsor: Sen. Dale Mahlum, SD 35, Missoula

Proponents: Governor Judy Martz
Brenda Nordlund, Mt. Department of Justice
William Muhs, President of MADD-Gallatin County
Marty Lambert, MCAA-Gallatin County
Dave Galt, Director of the Montana Department of Transportation
Shawn Driscoll, Chief of the Montana Highway Patrol
Jim Smith, Montana Sheriffs and Peace Officers Association
Bill Slaughter, Director of the Department of Corrections
Carey Haggeberger, Montana Contractors' Association
Pat Melby, Montana Medical Association
Kristi Blazer, Montana Beer and Wine Wholesalers Association
Mike Ruppert, CEO of Boyd Andrew Community Services
Sami Butler, Montana Nurses Association
Spook Stang, Montana Motor Carriers Association
Karen Oakland, Director of MADD, Yellowstone Co.
Charity Watt Levis, AAA Mountain West
Sherry Sutton Walla
Arlene Wylie, MADD, Gallatin County
Mark Staples, Montana Tavern Association
Troy McGee, Chiefs of Police Association,
Ken Dove, Montana Police Protective Association

Opponents: None

Opening Statement by Sponsor:

Sen. Dale Mahlum, SD 35, Missoula, introduced SB 13. He noted that the State of Montana was given a grade of "F" by Mothers Against Drunk Driving (MADD). Montana is the only state in the nation to receive this distinction. This legislation will bring

Montana into compliance with the federal regulations critical to the state's highway funding program. The legislation amends the provision of law that set 0.10 threshold for blood alcohol (BAC) content and reduces it to 0.08. Montana has the third highest fatality rating in relation to alcohol-related crashes. In 2001, 45% of all traffic deaths were alcohol related. Between 1998 and 2000, alcohol-related crashes costs Montanans \$400 million. National studies have shown significant driving impairment with the BAC above 0.08. The U.S. Department of Transportation, as part of the federal highway funding bill, has determined that states must adopt the 0.08 BAC level or lose a portion of the federal highway aid money.

Proponents' Testimony:

Governor Judy Martz rose in support of SB 13. She presented her written statement, **EXHIBIT(jus02b02)**.

Brenda Nordlund, Mt. Department of Justice, spoke in support of SB 13. The only item in the bill not driven by the federal requirements is the amendment to 61-8-442, which addresses the first time interlock provisions.

William Muhs, President of MADD-Gallatin County, presented his written testimony in support of SB 13, **EXHIBIT(jus02b03)**.

Marty Lambert, MCAA-Gallatin County, rose in support of SB 13. He stated that a blood or a breath test is the most objective scientific evidence regarding whether or not that person should be behind the wheel.

Dave Galt, Director of the Montana Department of Transportation, spoke in support of SB 13. He provided a handout, **EXHIBIT(jus02b04)**, and pointed out the information in regard to highway funding. If SB 13 is not enacted by September 30, 2003, the state's appropriation for highway funds will be reduced in 2004 by \$3.8 million; in 2005 by \$7.7 million; in 2006 by \$11.5 million and in 2007 by \$15.3 million. This appropriation will be held in suspense. If the state decides to change legislation, the money will be released and placed back in the highway construction fund. However, after 2007, the money will be gone. If this legislation is passed prior to July 1st, Montana will be eligible for a \$700,000 incentive that can be used in the Highway Traffic Safety Fund.

Shawn Driscoll, Chief of the Montana Highway Patrol, stated that they are in support of SB 13.

{Tape: 2; Side: B}

Jim Smith, Montana Sheriffs and Peace Officers Association, rose in support of SB 13.

Bill Slaughter, Director of the Department of Corrections, noted that their data shows that in about 24 to 36 months there may be 24 offenders who will actually reach prison as a result of this legislation. This is something they will be able to handle with little affect to the system. In 2001, there were 3100 DUI first offenders and 215 DUI fourth offenders. He added that some of the most horrific accidents he has seen involve young drivers who are driving at a high rate of speed.

Carey Haggeberger, Montana Contractors' Association, stated that 42 jobs are created for every one million dollars invested in highway construction. Drivers in construction work zones are close to highway construction employees. Impaired drivers provide for a very dangerous situation.

Pat Melby, Montana Medical Association, conveyed that physicians are among some of the first to see victim's of drunk driving accidents. The Association supports any legislation that will help reduce the death and injuries caused by drunk driving.

Kristi Blazer, Montana Beer and Wine Wholesalers Association, commented that her clients are 27 small businesses around the state who sell beer and wine to retailers. The intend of wholesaling was to put some distance between the manufacturer of alcoholic beverages and the consumer. They have always promoted the responsible consumption of their product. They promote programs which involve training the employees of bars, restaurants and grocery stores to recognize underage purchasers. The wholesalers in Montana are family owned businesses. They want the highways to be safe. They stand in support of this bill. She provided written testimony from the President of the Association, Kevin Devine, who is a second generation wholesaler from Great Falls, **EXHIBIT(jus02b05)**.

Mike Ruppert, CEO of Boyd Andrew Community Services, stated that they provide treatment for DUI offenders. It is the right time for this legislation and it is the right thing to do.

Sami Butler, Montana Nurses Association, contended that nurses know firsthand the devastating effects of intoxicated driving. A decreased level of BAC will not only prevent tragedies but also decrease health care costs. The **Montana Public Health Association** also supports this bill. She provided written testimony in their behalf, **EXHIBIT(jus02b06)**.

Spook Stang, Montana Motor Carriers Association, rose in support of SB13. The Association is concerned about the highway funding as well as safety aspect on our highways. The limit for a CDL is .04. Seventy five percent of the highway crashes in the state that involve trucks are not caused by the truck driver.

Karen Oakland, Director of MADD, Yellowstone County, Billings, stated that her life has been deeply touched three times by DUI crashes. Twelve years ago her son, who was 12 years old was trick or treating with her husband and nephew. Her son was hit by a drunk driver. He went into a shell and it has been a very long road for him. Their daughter was in a drunk driving crash. The drunk driver, who had been drinking all night, hit her car head on and killed the driver and passenger. On their 25th anniversary, which was a year later, they received a call that her husband's brother's son was in a motorcycle accident. He had been drinking and doing drugs and as a result he ran his motorcycle into a truck and killed himself. Their daughter and their nephew are buried side by side. Five years ago she was diagnosed with breast cancer. She is a survivor. She is cancer free today. The oncologist believed that the stress, shock, and trauma of losing her daughter to such a horrific crash took its toll on her health. Lowering the BAC will reduce crashes and save lives. No one will ever know if they or one of their loved ones will be the next victim of impaired driving.

Charity Watt Levis, AAA Mountain West, rose in support of SB 13.

Sherry Sutton Walla spoke on behalf of the victims of Montana. Her father was killed by a drunk driver. It always bothered her father that Montanans socialized around bars. Her parents were returning from dinner one evening when a repeat DUI offender who was driving at a high rate of speed, killed her father and severely injured her mother. She urged the passage of SB 13 because it will save lives. A study was conducted in Great Falls by highway patrol officers. People who thought they were capable of driving at .08 were actually highly impaired and failed the sobriety test. She urged the passage of HB 195, SB 39, and SB 13 as a packet so that all Montanans can be safe.

Arlene Wylie, MADD, Gallatin County, rose in support of SB 13. She has had an opportunity to wear the police training goggles that simulated what someone with a BAC of .08 would see and it was a chilling experience. The realization that people with that degree of impairment are still driving on our roads and not considered legally drunk is unbelievable to her.

Mark Staples, Montana Tavern Association, remarked that the Association members do not sanction, encourage or tolerate drunk

driving. They actively and aggressively discourage drunk driving through server training, home free programs, dial-a-ride, and designated driving. They believe that one of the most serious obstacles to further progress in this area is the high BAC repeat offender. They support any measures that will be effective in lessening the incident of impaired driving.

Troy McGee, Chiefs of Police Association, rose in support of SB 13.

Ken Dove, Montana Police Protective Association, urged support of SB 13.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. CURTISS questioned whether the fiscal note would cover ignition devices. **SEN. MAHLUM** did not believe that was a large part of the fiscal note.

SEN. CURTISS recalled that previous legislation that required these devices was not successful due to the costs involved. **SEN. MAHLUM** clarified that the language of the bill included that after the first offense, if the BAC is 0.18, the court would have the option to tell the offender that they should install the device but the offender would have to pay for it.

SEN. MCGEE asked **MS. Nordlund** to clarify the language involving changing the BAC from 18 percent to 0.16. **MS. Nordlund** stated that the ignition interlock provision applies in current law only to first time offenders. It was adopted in the 1997 Session. The .18 standard was adopted because the average BAC on an offender who was tested in Montana was .17. A first time offender who tests at .18 would have a significant alcohol involvement in their past. If an ignition interlock device is ordered by the court or mandated in order to have a probationary drivers license, it is the offender who is responsible for the installation and maintenance costs of the device. It is not an expense to the state or any county. The reason this was changed from .18 to .16 is that this is the national template when dealing with high BAC offenders. The legal limit is multiplied times two. The change is a policy decision for this Committee.

SEN. MCGEE noted that the original law used .18 percent. He questioned whether there was a typo in this regard to the placement of the percentage sign. **MS. Nordlund** referred to **MS. LANE** to make sure that the style comports with the style on alcohol concentration in the other statutes.

SEN. PERRY questioned why the .16 percent, in regard to the interlock device, was applicable only to first time offenders.

SEN. MAHLUM remarked that this legislation was passed in a previous session. The court may order an interlock device if the offender wants to pay for same. **MS. Nordlund** recounted that in 1999, the law was changed that a second or subsequent BAC offender, could not receive a probationary drivers license until the ignition interlock device was installed and the Department of Justice has proof of that installation.

SEN. O'NEIL questioned the success of the ignition interlock program. **Ms. Nordlund** did not have direct information in this regard. They personally reinstate a large volume, up to 50 percent of their revocations, based on the installation of the ignition interlock after the revocation.

SEN. O'NEIL questioned how much alcohol would need to be consumed to reach the .08 BAC. **Ms. Nordlund** maintained that this is all dependent on size, weight, food in the person's stomach, etc. One chart shows two drinks per hour, empty stomach, a male who weighs 100 pounds. For an average sized individual, that threshold would not be crossed until the individual is consuming four drinks per hour on an empty stomach. For a large female, 180 to 200 lbs, the threshold would not be crossed until the individual was in the three to four drink range. A lighter weight female could cross the threshold as early as two drinks on an empty stomach. This is very individualistic. What is not individualistic is the evidence of impairment at that threshold.

CHAIRMAN GRIMES requested more information from **Sherry Sutton Walla** in regard to the test conducted in Great Falls which she had referenced in her testimony. **Ms. Walla** explained that the test was conducted by the Montana Highway Patrol DUI instructors from Lewistown. This was funded by the DUI Task Force and Safe Kids. There were three local legislators present. Three women and one man were the subjects of the study. The first test was conducted with no alcohol in their systems. A series of tests included the alphabet, the sobriety test, and the field test. This was their baseline. The officers slowly brought the individuals to a .08 BAC. When they reached .08 BAC, it was very obvious that they were impaired. They failed the sobriety test and most other requirements. All but one individual was extremely comfortable to drive. One female was hesitant but thought she could get away with driving. She will supply more information to committee members.

CHAIRMAN GRIMES asked **Mr. Muhs** to discuss sources for research that has been done regarding impairment studies. **Mr. Muhs** noted that the end result is that 99 percent of the individuals who are

at .08 BAC fail one or more parts of driving tests. This research has been going on for 20 years. He will supply the committee with a list of the specific research citations.

CHAIRMAN GRIMES remarked that several witnesses had mentioned that Montana has somewhat of a drinking culture. By lowering the BAC to .08 we are sending the message that we do not want people drinking and driving. He questioned whether there had been discussions about lowering the BAC beyond .08. **Mr. Muhs** contended that it is the official position of MADD, as well as other entities, that .08 BAC is the appropriate level. Impairment starts well before .08 BAC for everyone. At .08 BAC there is a tremendous inflection point of the increase in risk that is very dramatic and that is the primary reason that .08 has been chosen.

SEN. PERRY questioned whether a person at a BAC of .075 would be able to operate a car sufficiently. **Mr. Muhs** maintained that some individuals cannot operate at lower levels. Current law allows an officer with probable cause to stop, arrest, and prosecute a person at levels below .08 BAC. Evidence of irresponsible and unsafe driving is needed. Most people do not choose to drive after having two or three drinks. Their behavior has changed because they know that this is not a good policy.

Closing by Sponsor:

SEN. MAHLUM remarked that in Missoula he drives by a home where a lot of people are in wheelchairs. He sees a lot of young persons completely incapacitated in a wheelchair. The majority of those individuals have been in alcohol-related motor vehicle crashes. This legislation will change the landscape of our beautiful state. This will mean fewer crosses by the side of the highways.

ADJOURNMENT

Adjournment: 10:30 A.M.

SEN. DUANE GRIMES, Chairman

JUDY KEINTZ, Secretary

DG/JK

EXHIBIT (jus02bad)